



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2013-0646; FRL-9908-72-Region 5]**

**Approval and Promulgation of Air Quality Implementation Plans;**

**Michigan; PSD Rules for PM<sub>2.5</sub>**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to Michigan's Prevention of Significant Deterioration (PSD) Program rules and definitions, including revisions to Parts 1 and 18 of Michigan's Air Pollution Control Rules into Michigan's State Implementation Plan (SIP). The revised rules address the Federal requirements for significant emission levels, and definitions for fine particulate matter (PM<sub>2.5</sub>). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions to EPA on August 9, 2013, and September 19, 2013.

**DATES:** This direct final rule is effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comments by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2013-0646, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).
3. Fax: (312) 886-0968.
4. Mail: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2013-0646. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in

hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Constantine Blathras, Environmental Engineer, at (312) 886-0671 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, [Blathras.constantine@epa.gov](mailto:Blathras.constantine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What Action is EPA Taking?
- III. Statutory and Executive Order Reviews.

#### **I. Background**

On August 9, 2013, MDEQ submitted revisions to Michigan rules R 336.2801, Definitions; R 336.2803, Ambient air increments; and R 336.2816, Sources impacting Federal Class I areas, additional requirements, which reflect changes to Federal rules on PM<sub>2.5</sub> and ozone precursors. MDEQ also submitted various revisions to Michigan rule R 336.2809 to allow for the exemption

from permitting requirements of minimal air quality impacts from new sources; however, MDEQ has requested that EPA not act on subsection R 336.2809(5)(a)(iii), which creates a significant monitoring concentration (SMC) for PM<sub>2.5</sub>. Michigan had promulgated this subsection before the U. S. Court of Appeals for the District of Columbia Circuit vacated the Federal PM<sub>2.5</sub> SMC on January 22, 2013. On September 19, 2013, MDEQ submitted revisions to definitions in Michigan rules R 336.1116, R 336.1119, and R 336.1122 to address additional changes to Federal rules. The revisions to rules R 336.1116 and R 336.1119 add significance levels and definitions for PM<sub>2.5</sub> and account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and in establishing emissions limits. The revision to R 336.1122(f) updates the definition of volatile organic compounds to exclude additional compounds with negligible reactivity in the formation of ozone that have been approved by EPA. However, MDEQ has asked EPA not to act on the revision to the definition of "significant" in rule R 336.1119 at this time. Michigan will resubmit revisions to that definition at a later date.

## **II. What Action is EPA Taking?**

EPA is approving the submitted revisions to Michigan's Part 1 definitions, with the exception of the definition of "significant" in rule R 336.1119. EPA has determined that the revised rules comply with the revisions to the Federal

requirements found in 40 CFR 51.100, 51.165, and 51.166, pertaining to new definitions and provisions for PM<sub>2.5</sub>.

EPA is approving the submitted revisions to Michigan's Part 18 PSD rules into the Michigan SIP, with the exception of R 336.2809(5)(a)(iii), on which we are taking no action. EPA has determined that the revised rules comply with the revisions to the Federal definitions and provisions pertaining to PM<sub>2.5</sub> found at 40 CFR 51.100, 51.165, and 51.166.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless we receive relevant adverse written comments by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We then will address all public comments in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action

should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule that may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of the adverse comment. If we do not receive any adverse comments, this action will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

### **III. Statutory and Executive Order Reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).



In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 17, 2014.

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52-- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1170 the table in paragraph (c) is amended by:

- i. Revising the entries in "Part 1. General Provisions" for R 336.1116 and R 336.1122; and
- ii. Revising the entries in "Part 18. Prevention of Significant Deterioration of Air Quality" for R 336.2801, R 336.2803, R 336.2809, and R 336.2816.

The revised text reads as follows:

**§ 52.1170 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Michigan Regulations**

Michigan citation	Title	State effective date	EPA approval date	Comments
* * * * *				
Part 1. General Provisions				
* * * * *				
R 336.1116	Definitions; P	11/30/2012	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	
* * * * *				
R 336.1122	Definitions; V	11/30/2012	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	

* * * * *				
Part 18. Prevention of Significant Deterioration of Air Quality				
R 336.2801	Definitions	11/30/2012	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	
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R 336.2803	Ambient Air Increments	11/30/2012	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	
* * * * *				
R 336.2809	Exemptions	11/30/2012	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	All except for section (5) (a) (iii)
* * * * *				
R 336.2816	Sources impacting federal class I areas; additional requirements	11/30/2012	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	
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[FR Doc. 2014-06825 Filed 04/03/2014 at 8:45 am; Publication Date: 04/04/2014]